



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#73  
W. H. H. H.  
9-27-02

Art Unit: 2632 )  
)  
Examiner: Julie Bichngoc Lieu )  
)  
Applicants: Alfred H. Judge )  
)  
Serial No: 09/636,272 )  
)  
Filed: August 10, 2000 )  
)  
For: **Power Tool Level Indicator** )

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SEP 25 2002

Technology Center 2600

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

APPELLANT'S REPLY BRIEF IN RESPONSE TO EXAMINER'S ANSWER  
And  
REQUEST FOR ORAL HEARING

Dear Sir:

Applicant respectfully requests an Oral Hearing and include the \$280.00 fee as specified  
under 37 C.F.R. §1.17(g).

REMARKS

In response to the Examiner's Answer mailed July 15, 2002, please consider the following.

With respect to the Examiner's rejection under 35 U.S.C. §112, Applicant indicates that  
Claim 33 will be amended as suggested by the Examiner after the adjudication of the present issues.

The Examiner, in her remarks, continues to misconstrue the teachings of the references. The  
Examiner states "the suggestion or motivation as stated in Bein that a leveling device is  
conventionally used in a workpiece". Nowhere does Bein state that it is used in a workpiece. Bein

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is used in a staff level. The Bein reference teaches, as best described in Col. 3, lines 35 through 39, the following:

“The present invention is a level indicating device that indicates to a remote interested party, when the device has attained a predetermined angular orientation relative to the direction of the force of gravity, and preferably a vertical or a horizontal orientation.”

This is further followed up in the fact that Bein claims that the housing of the staff level has at least one planar surface. Nowhere does Bein suggest a use other than the use of a staff level to indicate to a remote interested party that the workpiece is level.

The Jansky reference discloses an auxiliary level which is added to a position outside the housing of a drill. The level has an elbow shape with bubble levels on both ends.

The Examiner further states that

“further there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art.”

While the motivation need not be expressly articulated, there must be a logical nexus of combining the two devices together. Here, the Examiner has provided only conclusatory statements and provides no reasoning whatsoever as to why a staff level should be combined with a power drill. Accordingly, as has been stated the Examiner is utilizing impermissible hindsight to arrive at the determination of obviousness. The Examiner cannot use Applicant's invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The Examiner is utilizing hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. Clearly, this is not a proper application of the references under 35 U.S.C. §103.

CONCLUSION

Applicant respectfully submits that the Examiner has failed to provide prior art which obviates Applicant's invention. Likewise, the Examiner has failed to provide art which would establish a prima facie case of obviousness.

Applicant's invention provides the art with a power tool with a leveling device which indicates to the user horizontal or vertical positions of the power tool. Accordingly, reversal of the final rejection of Claims 25 through 31 and allowance of the claims is respectfully requested

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

Dated: September 16, 2002

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